

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 96-0066
Adjusted Gross Income Tax
For The Tax Periods: 1987 through 1990**

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ISSUE

I. **Adjusted Gross Income Tax – Nexus**

Authority: IC 6-8.1-5-1, IC 6-8.1-6-4, 45 IAC 3.1-1-94, 45 IAC 15-3-2.

The Taxpayer protests the Department's assessment of adjusted gross income tax based on adjustments to their federal gross income.

STATEMENT OF FACTS

Taxpayer manufactures and sells wine and brandy. All manufacturing of the product takes place out-of-state. The Taxpayer does not maintain a warehouse or stock of goods in Indiana. The Taxpayer has approximately ten sales personnel in Indiana who work out of their homes. The salespersons take orders from distributors, which are processed and accepted out-of-state. The Taxpayer filed Indiana income tax returns (IT-20) for the years in question. During an audit, an adjustment was made to increase income before apportionment due to increases in federal income pursuant to Federal audit adjustments per Federal forms 4549-A. The Taxpayer did not report these changes to Indiana. More facts supplied as necessary.

I. **Adjusted Gross Income Tax: Nexus**

DISCUSSION

Taxpayer was assessed adjusted gross income tax after failing to notify the Department of changes made to the federal return. Pursuant to 45 IAC 3.1-1-94: “All taxpayers, except resident individuals, are required to file a notice with the Department within 120 days after a modification of a Federal income tax return or a modification of Federal income tax liability explaining the modification.”

The Taxpayer argues that they did not have sufficient nexus and did not have a responsibility to report the changes from Federal forms 4549-A, (Income Tax Examination Changes), when they were issued to the Taxpayer. The Taxpayer originally filed Indiana income tax returns (IT-20) for the years in question.

IC 6-8.1-5-1 specifically provides that notice of a proposed assessment is *prima facie* evidence that the Department’s claim for the unpaid tax is valid. It is the burden of the taxpayer to prove that the proposed assessment is wrong. Here, the Taxpayer has not met that burden of proving the assessments were in error. The original returns were certified as being true in compliance with IC 6-8.1-6-4. If those returns were in error, the Taxpayer should have filed amended returns for the years in question.

The Taxpayer argues that they were unable to amend the original returns because of the statute of limitations. An amended return must be received within the statute of limitations except when federal adjustments are made to a return after the statute of limitations has expired in which case the taxpayer has 120 days to submit an amended return.

FINDING

The Taxpayer’s protest is respectfully denied.